

**BAY AREA LEGAL AID  
PERFORMANCE STANDARDS  
August 17, 2001**

**Introduction and Statement of Purpose**

As a new program, Bay Area Legal Aid aspires to efficiently provide effective, free legal assistance to poor residents in the seven counties constituting our service area. While our past was largely the experience of separate, county-focused organizations, our present and future is the construction of a regional framework which includes the expansion to areas in which our predecessor organizations had no presence.

To accomplish this, we must use our formative years to nurture an identity as a united program, with our primary goal being to ensure that each client will have access to generally the same level of legal services in each of our substantive priorities, no matter where in the Bay Area he or she lives. The fundamental purpose of providing assistance is to help the client get her or himself out of poverty, or to help those who cannot escape poverty lead more stable lives. This mission will not be accomplished without a commitment to ensuring that the services we provide are of the highest quality. These standards are intended to provide a rod by which to measure the quality of our performance.

These standards apply to all BayLegal staff. They are meant to provide an ongoing reference guide for professional development and a basis for assessing staff performance.

**Format of the Performance Standards**

The standards are divided into three major categories: client and community relations, implementation of the program's mission and policies, and effectiveness in resolving clients' legal problems. There are 24 performance standards. Standards 1-6 and Standard 19 apply to all staff members. Other standards apply to advocates and other staff members who perform advocacy work. The standards are adapted from the American Bar Association Standards for the Provision of Civil Legal Services to the Poor, performance standards adopted by the Legal Aid Foundation of Los Angeles, the BayLegal Advocacy Manual, and other relevant program policies.

The description of each standard includes relevant factors that are guidelines for staff conduct and for assessing a staff member's performance. These factors, however, are not intended as the exclusive list of all factors applicable to a given performance standard. All staff members are expected to maintain a high standard of personal integrity, foster positive relationships with staff, clients, and all members of the public and enhance the reputation of the program through their conduct.

Initially, the Performance Standards address three areas that apply to all BayLegal staff, regardless of their years of experience:

1. The willingness and ability of the staff member to foster and maintain productive relationships with clients and to promote an appropriate, professional public image of the program;
2. The staff member's level of personal and professional ethical integrity; and
3. The willingness and ability of the employee to foster and maintain positive, professional and cooperative relations within the program. BayLegal expects attorneys with five or more years of experience to exhibit certain additional supervisory and leadership qualities.

The next group of Performance Standards contains criteria that relate specifically to the legal work of advocates within the program. These areas include:

1. The role of the staff member in carrying out the program's mission and principles of advocacy;
2. The quantity and quality of client advocacy and the staff member's willingness and ability to learn and effectively employ a broad range of advocacy tools and techniques; and
3. The degree to which the staff member's contributions to BayLegal reflect professional development consistent with training and experience.

These legal advocacy standards reflect the program's expectation that advocates will contribute to the work of the agency by continuing to develop their professional skills and to share their expertise with other advocates in a manner commensurate with their experience.

Finally, the standards contain guidelines for advocacy and professional development.

## **I. Performance Standards Related to Client Relations and Projecting a Positive Public Image of Bay Area Legal Aid**

### **PERFORMANCE STANDARD 1: Establishing an Effective Relationship with the Client**

**STAFF SHOULD ESTABLISH A POSITIVE, EFFECTIVE PROFESSIONAL RELATIONSHIP WITH ALL CLIENTS IN A WAY WHICH FOSTERS CLIENT TRUST AND CONFIDENCE IN THE STAFF AND IN THE PROGRAM.**

The staff member treats the client courteously and sensitively, while demonstrating a commitment to preserving client dignity and overcoming such possible obstacles to an effective relationship with the client as:

- a) Fear and mistrust of the legal profession;
- b) Lack of understanding of legal remedies;
- c) Disabilities or conditions which may impede communication or access;

- d) Language and cultural barriers that may prevent effective communication.

Relevant Factors include the following:

1. The advocate shows respect for clients by beginning appointments on time; by promptly returning telephone calls from clients; by treating the client respectfully and appropriately, avoiding conduct which may be perceived as short-tempered, rude, abrupt, hostile, or condescending.
2. The advocate dresses appropriately while representing the program and when clients may be present.
3. The advocate seeks to preserve the goodwill of those who are denied service, by:
  - a) Explaining clearly, accurately and promptly the reasons for rejecting representation of the client;
  - b) Explaining the procedures and rights available to a client who wishes a review of the decision declining representation, and volunteering such information when a client complains or is upset about a lack of assistance; and
  - c) Whenever possible, referring rejected applicants for service to other sources of assistance, after confirming that the referral offers a reasonable possibility of assistance to the client.

## **PERFORMANCE STANDARD 2: Preserving Client Confidences**

### **CONSISTENT WITH ETHICAL AND LEGAL RESPONSIBILITIES, STAFF MUST PROTECT CLIENT INFORMATION FROM UNAUTHORIZED DISCLOSURE.**

Relevant Factors include the following:

1. Staff does not leave files or client information exposed on any desk that is in a public area or in an area where confidential information (including client identity) may be disclosed to other than BayLegal staff.
2. Staff does not interview the client in public areas such as waiting rooms or locations where persons other than BayLegal staff may overhear conversations.
3. Staff does not reveal the fact that the program is representing a client, except as authorized by the client (or required by law) and to the extent that disclosure is necessary to pursue the client's objective.
4. Staff will not discuss clients or client cases among program staff when there may be other clients or non-program individuals present.

5. Except as required by law, staff will avoid disclosing information regarding a client or an applicant for services to a funding source or outside the agency. Questions concerning these requests should be referred to the Executive Director.
6. Particularly sensitive client-related information will be discussed with the client in a respectful manner and obtains informed consent before any disclosure.

### **PERFORMANCE STANDARD 3: Promoting Program Stature and Credibility**

**STAFF MEMBERS SHOULD RECOGNIZE THAT THEIR PROFICIENCY AND GOOD JUDGMENT ENHANCES THE INSTITUTIONAL STATURE AND CREDIBILITY OF THE PROGRAM, WHICH IN TURN STRENGTHENS ITS CAPACITY TO REPRESENT CLIENTS SUCCESSFULLY. BAYLEGAL STAFF MEMBERS ARE EXPECTED TO PROMOTE A POSITIVE REPUTATION FOR THE PROGRAM.**

Relevant Factors include the following:

1. Staff shows a commitment to building effective relationships and a reputation for high quality services for the program among clients, the community-at-large, adversaries, and the legal community, including judges and other decision-makers.
2. Staff exercises sound judgment by making practical decisions, considering costs and benefits of approaches, setting and implementing priorities, seeking and providing guidance, and avoiding frivolous claims.
3. Staff is familiar with, and abides by, the rules of professional conduct appropriate to the tribunal in which the client is being represented.

## **II. Performance Standards Related to Program Policies and Procedures**

### **PERFORMANCE STANDARD 4: Contribution to Program**

**STAFF IS EXPECTED TO WORK COOPERATIVELY WITH OTHER STAFF MEMBERS AND PARTICIPATE ACTIVELY WITHIN THE PROGRAM ON ISSUES OF IMPORTANCE.**

Relevant Factors include the following:

1. Staff is expected to demonstrate the ability to interact and communicate effectively with differing personality styles, developing good working relationships and abiding by the highest standards of truthfulness in dealings with BayLegal supervisors and co-workers.
2. Staff is expected to be actively involved in the development and maintenance of BayLegal policies and procedures, and the resolution of program problems.
3. Staff is expected to show interest in, and commitment to, improving the quality and quantity of his or her work, accepting constructive criticism and supervision and a

willingness to revise written work product, or to modify or acquire necessary advocacy skills according to suggestions received.

4. Staff demonstrates a commitment to share expertise and experience with other BayLegal staff and to be available for consultation about their skills and advocacy.
5. Advocates avoid contributing to unreasonable work demands placed upon support staff and are sensitive to issues of work flow (does not wait until the last minute to assign work) and gives clear and (when written) legible instructions to secretaries and other support staff.
6. Advocates who are professional, exempt staff may regularly work more than the scheduled number of hours and must always do so when required by job responsibilities.

#### **PERFORMANCE STANDARD 5: Implementation of Program Mission and Policies**

##### **STAFF COMPLIES WITH THE PROGRAM'S MISSION, PRINCIPLES SET FORTH IN THE ADVOCACY MANUAL, AND OTHER PROGRAM POLICIES.**

Relevant Factors include the following:

1. Legal work is within BayLegal's priorities, implements the program's mission, and is carried out in accordance with the Advocacy Manual and other relevant program policies.
2. Staff regularly initiates and participates in effective advocacy efforts to achieve long-term or systemic benefits for the client community on legal problems within program priorities, and is actively engaged in working with community, client and/or professional groups toward accomplishing priorities, or meeting client needs.
3. The staff member prepares and maintains an annual work plan coordinated with those of the relevant unit, office or substantive area, and fulfills his or her responsibilities set forth in the plan.
4. Staff knows and adheres to requirements of funding sources, including the Legal Services Corporation, and BayLegal policies on compliance. All Advocates must submit complete and accurate timekeeping records in a timely and consistent manner. All staff members recognize that failure to follow compliance standards jeopardizes the program and service to clients.
5. The staff member manages time effectively, flexibly and readily adapts to changes, and is reliable.
6. The staff member continues to develop proficiency, seeks increased responsibilities, and helps out in emergencies and functions well under pressure.

## **PERFORMANCE STANDARD 6: Community Advocacy**

### **STAFF SHOULD RESPOND TO THE NEEDS OF CLIENTS IN A MANNER CONSISTENT WITH BAYLEGAL'S PRIORITIES AND ADVOCACY POLICIES**

Relevant Factors include the following:

1. The staff member functions as a community advocate for the needs of poor persons by interacting with the client community within the relevant service area, in order to:
  - a) Remain aware of clients' changing circumstances and legal needs;
  - b) Advise clients regarding changes in laws and regulations and problems they face that they may not recognize as presenting legal issues; and
  - c) Keep the client population informed regarding BayLegal's services.
2. The staff member facilitates and extends the presence of BayLegal in the client community, by serving on boards of directors and other governing bodies of community-based organizations and representing community-based client groups.
3. The staff member regularly and effectively links his or her advocacy in substantive law areas with participation in or involvement with other human services providers, nonprofit organizations, community and client groups, and government agencies.

## **III. Performance Standards Related to Resolving Client Problems Effectively**

### **PERFORMANCE STANDARD 7: Results of Representation**

#### **EACH ADVOCATE SHOULD ENGAGE IN WORK DESIGNED TO ATTAIN LASTING RESULTS RESPONSIVE TO THE PROGRAM'S MISSION.**

Relevant Factors include the following:

1. The advocate pursues the client's objective zealously within the confines of the law, through high quality representation.
2. In those instances where the advocate identifies laws, policies, or practices that actively work to the detriment of the client's interests, or which are ignored, misapplied, or applied inconsistently by agencies or individuals in a way that harms clients, the advocate demonstrates a willingness and ability, where appropriate, to engage in multiple forms of advocacy, **consistent with funding restrictions**, including:
  - a) Litigation raising statutory or constitutional questions;

- b) Administrative advocacy seeking changes in agency rules, regulations and practices of general application; or
  - c) Legislative advocacy seeking statutory change.
3. Each advocate is expected, in his or her area of practice, or in a related area, to undertake impact work, commensurate with the advocate's experience, that implements BayLegal's mission, priorities, and principles of advocacy.

## **PERFORMANCE STANDARD 8: Client Participation in the Conduct of the Representation**

**SUBJECT TO LEGAL AND ETHICAL OBLIGATIONS, ADVOCATES MUST ABIDE BY CLIENT DECISIONS REGARDING THE OBJECTIVES OF THE REPRESENTATION AND MUST CONSULT WITH CLIENTS REGARDING THE MEANS USED TO ACHIEVE THOSE OBJECTIVES.**

Relevant Factors include the following:

1. The advocate uses professional skills to identify strategic options for resolving the client's problem and explains the potential risks and consequences of each, so that the client can meaningfully participate in decisions regarding major case strategy.
2. The advocate informs the client of the expectation that the client will, when appropriate, assist in the preparation of the case, by helping to identify and locate witnesses, documents or physical evidence, cooperating with discovery requests, and keeping documentation and records.
3. The advocate consults with the client regarding the means to be used to accomplish the client's objectives, with respect to all but minor, technical, or unavoidably emergent decisions about the case.
4. In group representation, the advocate clarifies that the advocate's proper role is to advise the group, not to lead it.
5. If the client indicates an interest in pursuing a frivolous or malicious claim, presenting false evidence, or engaging in other illegal activity in the representation, the advocate explains the applicable ethical prohibitions and, if appropriate, timely withdraws as counsel of record.
6. In active, open cases, the advocate ordinarily maintains contact with each client at least every 30 days.
7. In cases that are inactive or pending an appeal, the advocate ordinarily maintains client contact at least every 90 days.
8. The advocate informs the client immediately of major developments in the case, or where new or revised strategies are required.

9. When appropriate, the advocate gives the client copies of major correspondence and pleadings.
10. The advocate makes particular efforts to communicate meaningfully with clients whose special circumstances, such as mental or physical disability, make understanding more difficult.

**PERFORMANCE STANDARD 9: Establishing a Clear Mutual Understanding with the Client**

**ADVOCATES SEEK TO MAINTAIN A CLEAR MUTUAL UNDERSTANDING WITH EACH CLIENT THROUGHOUT THE REPRESENTATION, BEGINNING WITH AN INITIAL EXPLORATION OF THE CLIENT'S PROBLEM**

Relevant Factors include the following:

1. Before the initial interview, the advocate becomes familiar with the information previously gathered by BayLegal intake workers to avoid requiring unnecessary, repetitious demands on the client.
2. The advocate conducts the interview in a way that promotes the full development of facts leading to the legal problem(s) and related problems that the client hopes to resolve. This includes the following elements, where warranted and as appropriate:
  - a) Establishing rapport with the client and placing the client at ease;
  - b) Identifying the advocate;
  - c) Explaining how the program works;
  - d) Explaining the purpose of the interview;
  - e) Eliciting the client's problem(s);
  - f) Organizing the presented facts;
  - g) Providing counsel and advice;
  - h) Explaining what BayLegal can do, including any limitations on the offered representation;
  - i) Exploring other resources;
  - j) Describing the next immediate step;
  - k) Allowing and encouraging the client to ask questions;
  - l) Except for brief service or advice matters, explaining the retainer agreement to the client, and ensuring that the client executes the original and receives a copy of the retainer; and
  - m) Closing the interview with proper amenities, including escorting the client out of the office.



3. The advocate advises the client at the outset of representation that appeals from court or administrative decisions are not automatic and that a separate decision on whether to represent the client in further appeals will be made, if necessary.
4. The advocate is alert to the possibility of an undiscovered conflict of interest with a current or previous client of BayLegal and cooperates fully with program policy and procedures regarding conflicts.
5. In situations involving client groups or many family members, the advocate reaches agreement with the client at the outset on who has the authority to decide what action to take in the representation, in order to avoid potential conflicts of interest.
6. In situations where an individual contacts BayLegal for a person who cannot contact the program himself or herself due to disability, the advocate endeavors to discover and avoid any potential conflicts of interest.
7. The advocate strives to reach agreement with the client regarding the responsibilities each has in the case.
8. Where applicable, the advocate makes certain that the client understands the program's policy on attorney fees.
9. The advocate attempts to ensure that the client is aware of the importance of keeping the program informed of changes in circumstances affecting their case and advising the program of their whereabouts.

#### **PERFORMANCE STANDARD 10: Case Planning and File Organization**

**THE ADVOCATE MAINTAINS AN ORGANIZED CASE FILE FOR EACH CLIENT RETAINED FOR MORE THAN BRIEF SERVICE, ENGAGES IN CASE PLANNING WHICH EVALUATES ALL FACTORS AFFECTING THE OUTCOME OF THE CASE AND DEVELOPS, IN WRITING, A CLEAR, LONG-RANGE STRATEGY FOR PROSECUTION OR DEFENSE OF THE CLIENT'S CLAIM.**

Relevant Factors include the following:

1. For brief service or advice cases, all eligibility information and the nature of the legal assistance provided are documented in the case management system file.
2. The decision to represent a client is generally made in consultation with the supervisor and other advocates who are members of the relevant work unit.
3. For extended service cases, the advocate prepares an opening memorandum and/or case plan in a timely manner for each case for which the advocate is responsible and prepares case status memos where appropriate. While the nature and extent of the memorandum will vary depending on the complexity of the case, at a minimum it should include:

- a) A statement of relevant facts;
  - b) A statement of the issues and the state of the law applicable to the issues and particular facts of the case;
  - c) The client's personal circumstances;
  - d) External resources available or required to address the client's problem;
  - e) As appropriate, the existence of other parties with a stake in the outcome of the matter.
  - f) An evaluation of the statute of limitations relevant to the case; and
  - g) A timetable for completion of the preliminary tasks.
4. To the extent not documented in the opening memo or case plan, each file should contain other documentation:
- a) Identifying the legal issues which must be researched and the additional evidence which must be researched and obtained;
  - b) Summarizing material facts to legal issues raised by the client's problem;
  - c) Identifying applicable law and available remedies; and the advantages and disadvantages to each possible remedy;
  - d) Reflecting any major or significant changes in the case plan.
5. The advocate organizes client files so that materials are arranged in a logical, coherent manner such that critical case-related documentation is contained in the file and can be readily found and used. The case file will typically include:
- a) Client and witness interviews;
  - b) Contacts with adverse parties and counsel;
  - c) Negotiations and settlement agreements;
  - d) Legal research;
  - e) Fact investigation;
  - f) Court filings; and
  - g) Changes in the legal theory, strategy, or case plan.
6. Both the case file and the timekeeping system will contain accurate and current records of activities performed in the case.
7. After adopting a strategy, the advocate determines key steps to carry it out, with a program timetable for completing them.

8. If extraordinary program resources will be necessary to pursue the case, the advocate discusses their availability with the supervisor as appropriate under program policy.
9. The advocate, in coordination with the relevant work unit, uses case planning to assess whether the client's problem is part of a recurring pattern or one aspect of a broader problem affecting other program clients, in order to chart, where appropriate, a more comprehensive and cost-effective case strategy, including legislative, administrative, or community advocacy.
10. In the specific context of litigation, the advocate engages in long-range strategy planning which includes the following:
  - a) Identifying the facts that must be obtained through discovery and other means;
  - b) Identifying the legal issues requiring research;
  - c) Assessing the opponent's probable response and how it may be countered;
  - d) Estimating the resources necessary and available to pursue the client's objective; and
  - e) Assessing the probable costs to the opponent and their possible impact on the willingness to negotiate and compromise.
11. The advocate prepares for litigation assuming the client's claim or defense has to be established at a full trial or hearing.
12. The advocate identifies legal issues that could be the basis for an appeal to ensure that a sufficient record is created.
13. Upon the termination of advocacy efforts for the client, the advocate drafts, in a timely manner, a closing memo for the file that summarizes the case and its results, and notifies the client in a written letter of the conclusion of the representation.
14. The advocate must ensure that the case file contains relevant documentation of LSC compliance such as eligibility forms, retainer agreements, and client statement of facts.

#### **PERFORMANCE STANDARD 11: Investigation**

**THE ADVOCATE SHOULD INVESTIGATE EACH CLIENT PROBLEM TO ESTABLISH ACCURATE AND THOROUGH KNOWLEDGE OF ALL RELEVANT FACTS.**

Relevant Factors include the following:

1. The advocate begins gathering information promptly upon undertaking a matter, unless there is a reasonable strategic reason not to, which is noted in the file.

2. The advocate is attentive to the need to uncover unfavorable facts, as well as favorable ones.
3. The advocate organizes the facts in relation to the legal issues, in order to evaluate their impact on the client's objectives and to identify the need for further investigation.
4. The advocate records the results of the investigation in contemporaneous written memoranda for the case file. As appropriate, this includes:
  - a) Interviewing witnesses and informally contacting opposing counsel or an unrepresented adversary;
  - b) Obtaining documents in the client's possession and those available through discovery, or obtainable as public records under state or federal law;
  - c) Personally observing the scene at which key events took place; and
  - d) Taking photographs.

## **PERFORMANCE STANDARD 12: Legal Research and Analysis**

**THE ADVOCATE SHOULD ANALYZE EACH MATTER AND DOCUMENT THE RESEARCH CONDUCTED REGARDING PERTINENT ISSUES, IN ORDER TO DETERMINE THE RELATIONSHIP BETWEEN THE CLIENT'S PROBLEM AND EXISTING LAW**

Relevant Factors include the following:

1. The advocate conducts preliminary research that forms the basis of tentative legal theories that shape potential case strategy.
2. The advocate continues to conduct legal research and analysis as part of an ongoing reevaluation of strategies and theories, to concentrate efforts on those issues that are most relevant and critical to resolving the client's problem.
3. The advocate reduces legal research and analysis to writing which is kept in the case file. This writing should include a discussion of favorable and unfavorable law discovered in research.
4. The advocate does not rely exclusively upon secondary sources such as treatises, instead directly reviewing primary sources in order to allow consideration of their relevance to the client's problem and to obtain full comprehension of the legal issues involved.
5. The advocate makes certain that each consulted source of legal research is current.
6. When research confirms that a client's interest cannot be reasonably pursued without a major effort to modify existing law, the advocate discusses with a project coordinator, managing attorney, the director of advocacy, or the executive director, as appropriate, the likelihood of success, the resources needed to represent the client, the importance of

the issue to the client and its relation to program priorities and whether other resources exist which might resolve the problem.

### **PERFORMANCE STANDARD 13: Negotiations**

**THE ADVOCATE PLANS AND CONDUCTS NEGOTIATIONS IN ORDER TO FURTHER CLIENT OBJECTIVES, AND ENTERS INTO FORMAL AGREEMENTS WITH ADVERSARIES ONLY WHEN SPECIFICALLY CLIENT-AUTHORIZED.**

Relevant Factors include the following:

1. Before undertaking negotiations, the advocate seeks to ascertain:
  - a) The strengths and weaknesses of the positions of both the client and the opponent;
  - b) The probable overlap between the range of settlements acceptable to each party;
  - c) The client's opening and potential fall-back positions; and
  - d) The points of leverage, including personal and nonlegal considerations, which will dispose the parties toward settlement.
2. In matters subject to litigation, the advocate considers the appropriateness and timing of negotiations as part of an overall litigation strategy that is based on a thorough analysis of the facts and the law, and an evaluation of the circumstances of the client and the adversary.
3. The advocate generally attempts negotiation before commencing litigation, unless this would jeopardize the client's interests. The advocate seeks specific client approval before a final agreement or settlement is offered or accepted.
4. The advocate ensures that the final agreement is reduced to a written document, preferably drafted by the advocate instead of opposing counsel, in a way that covers all material issues and potential enforcement problems.

### **PERFORMANCE STANDARD 14: Drafting Pleadings**

**THE ADVOCATE DRAFTS PLEADINGS SO AS TO PRESERVE AND ADVANCE THE CLIENT'S CLAIM IN ACCORD WITH THE REQUIREMENTS OF APPLICABLE LAW.**

Relevant Factors include the following:

1. The advocate files pleadings only after the completion of sufficient research and factual investigation to decide the most effective legal argument and theory of the case, unless immediate action is necessary to protect the client's health or safety, or to safeguard important rights.

2. The advocate thoughtfully considers all elements of pleadings for their strategic and tactical impact on the case, including the following:
  - a) The choice of parties is based on their necessity to the case and their likely impact on such matters as the effectiveness of discovery or the breadth of available relief
  - b) The choice of forum accounts for jurisdictional limitations and the likelihood of success.
  - c) The choice of claims for relief or defenses takes into account their importance to overall strategy; potential impact on the hearing tribunal, in negotiation and on appeal; problems of proof, and the areas of discovery open for the parties.
  - d) Advocates should choose remedies from a broad range of available relief.
  - e) If the client decides, after discussion, to forego an available claim for relief, the advocate confirms that decision in a letter to the client.
3. The advocate complies with the applicable rules of pleading of the forum and files them in a timely manner.
4. A sufficient time before filing, the advocate submits all non-routine pleadings for review by a managing attorney or designee, as appropriate.

#### **PERFORMANCE STANDARD 15: Motions**

**MOTIONS SHOULD BE CONSIDERED TO PROMOTE THE SUCCESSFUL, EXPEDITIOUS, AND EFFICIENT RESOLUTION OF THE LITIGATION.**

Relevant Factors include the following:

1. The advocate plans motion practice in each litigated case according to the potential uses of motions:
  - a) as procedural vehicles to reach and resolve substantive issues;
  - b) to control the pace and direction of the litigation; and
  - c) to protect the client's interests and place the case in a more favorable posture.
2. The advocate cogently researches, carefully drafts and proofreads, and prepares and argues each motion, recognizing that motions may educate the decision-maker regarding the factual and legal issues in the case.

#### **PERFORMANCE STANDARD 16: Discovery**

**ADVOCATE USES THOROUGHLY PREPARED AND TIMELY FORMAL DISCOVERY WHEN APPROPRIATE.**

Relevant Factors include the following:

1. The advocate routinely uses formal discovery in contested cases.
2. The advocate employs a litigation strategy using a written discovery plan that identifies facts that must be obtained and their probable sources.
3. The advocate uses the most efficient and effective method to obtain the needed information.
4. The advocate seeks the review of non-routine discovery by a managing attorney or designee.
5. The advocate carefully prepares discovery inquiries to obtain unambiguous responses, and thoroughly analyzes the information obtained to permit follow-up to clarify ambiguities and to pursue new potential avenues of inquiry.
6. When replying to an adversary's discovery requests, the advocate issues prompt, straightforward responses that are also carefully prepared to prevent inadvertent, damaging disclosures and admissions.

#### **PERFORMANCE STANDARD 17: Trial or Hearing Preparation and Presentation**

##### **THE ADVOCATE THOROUGHLY PREPARES FOR A TRIAL OR HEARING.**

Relevant Factors include the following:

1. Prior to trial or hearing, the advocate:
  - a) Reviews and indexes all discovery and documentary evidence to be used at trial.
  - b) Prepares a witness list and develops a schedule for serving subpoenas and other methods of ensuring the availability of evidence at trial.
  - c) Develops a trial notebook including written outlines of case theories, legal claims and corresponding elements of necessary proof, anticipated evidentiary issues, direct examination, cross examination, and opening and closing statements or, in routine cases, has other appropriate method of preparing and logically organizing case materials and legal planning for use during litigation.
  - d) Prepares witnesses by explaining the trial procedures, reviewing their testimony, explaining what the advocate is attempting to prove and attempting to reduce any anxiety they may feel about the trial.
  - e) Prepares exhibits that will be introduced at trial.

- f) Reviews the law and brings it to the proceeding in a form that can readily be referred to as needed.
  - g) Drafts and submits trial and post-trial memoranda of law, as appropriate.
  - h) Drafts a post-trial memo to the file that outlines the advocate's impression of the trial, important developments at the proceeding and any information that may be relevant to a potential appeal.
  - i) Reviews trial and hearings preparation in all non-routine cases with the managing attorney, as appropriate.
2. The advocate conducts a trial or hearing in a way that is appropriate to the rules, procedures and practices of the tribunal, and reflects preparation and organization.

### **PERFORMANCE STANDARD 18: Appellate Practice**

**WHEN THERE IS AN ADVERSE APPEALABLE JUDGMENT OR ORDER, THE ADVOCATE DETERMINES WHETHER TO APPEAL IN ACCORDANCE WITH BAYLEGAL POLICIES REGARDING APPEALS AND EXPLAINS THAT DECISION TO THE CLIENT IN A TIMELY MANNER, IN ORDER TO ENABLE THE CLIENT TO SEEK OTHER REPRESENTATION IN THE EVENT THAT BAYLEGAL DOES NOT UNDERTAKE THE APPEAL.**

The decision is based upon:

- 1. The merits of the client's appeal;
- 2. Program priorities and available resources and
- 3. The potential benefits and risks of pursuing an appeal.

Relevant Factors include the following:

- 1. Regardless of whether BayLegal under-takes to represent the client on appeal, the advocate advises the client in writing of any right to appeal and of the steps that need to be taken to perfect appellate rights, including appropriate time limits.
- 2. The advocate independently evaluates, and seeks program review of a proposed appeal according to the following criteria:
  - a) The client's desire to proceed;
  - b) Legal merit of the appeal;
  - c) Probability of success;
  - d) Potential benefits and risks to the client and to other clients;
  - e) Time, expense and program resources likely to be required for prosecution of the appeal; and



- f) Relationship of the issue on appeal to established BayLegal program priorities.
- 3. The advocate obtains the client's specific authorization to appeal.
- 4. The advocate submits appellate briefs and memoranda for review by the managing attorney, executive director and others, as appropriate.
- 5. The advocate prepares for oral argument by mooted with other advocates before the argument.
- 6. The advocate strictly complies with all applicable appellate rules of procedure regarding deadlines for filing notices of appeal, motions, briefs and record transcripts, as well as the requirements governing form and style of briefs and other documents.

**PERFORMANCE STANDARD 19: Quality of Written Work (Applies to All Staff)**

**A STAFF MEMBER'S WRITING IS CLEAR, PRECISE, AND PERSUASIVE.**

Relevant factors include the following:

- 1. The staff member's written work is carefully edited and proofread, and reflects a commitment to quality service.
- 2. All pleadings, memos, letters, etc., are prepared in a timely manner, allowing sufficient time for editing and proofreading by a peer or supervisor.
- 3. All written work conveys current knowledge of substantive law, the facts of the matter and any applicable policies. Pleadings are based upon legal research, factual investigation and an analysis of strategic impact.

**PERFORMANCE STANDARD 20: Administrative Advocacy**

**CONSISTENT WITH THE REQUIREMENTS OF FUNDING SOURCES, ADMINISTRATIVE ADVOCACY IS UNDERTAKEN BY THE ADVOCATE REGARDING THE AGENCY'S POLICIES, PRACTICES, AND PROCEDURES AND AGENCY ADOPTION OF RULES, REGULATIONS AND ORDERS OF GENERAL APPLICATION.**

Relevant Factors include the following:

- 1. The advocate fully participates in planning and carrying out administrative advocacy in her or his areas of expertise.
- 2. The advocate obtains approval of the executive director, pursuant to program policy, before engaging in administrative rule-making advocacy. The advocate is fully aware of what activities are permissible and restricted under LSC rules.

3. The advocate follows and is aware of changes in regulation and agency practice that affect clients in substantive area of advocate's expertise.
4. When engaging in rule-making advocacy, the advocate does not merely react to proposed rules, but also considers presenting reasonable alternatives that assert clients' interests.
5. The advocate is aware of and utilizes the administrative procedures relevant to the particular proceeding.
6. The advocate anticipates potential political and economic considerations beyond the legal issues apparent in the hearing record that the administrative agency may take into consideration and tailors the representation accordingly.

### **PERFORMANCE STANDARD 21: Legislative Advocacy**

**CONSISTENT WITH THE REQUIREMENTS OF FUNDING SOURCES, LEGISLATIVE ADVOCACY IS UNDERTAKEN BY THE ADVOCATE IN AN EFFECTIVE AND PROFICIENT MANNER, WHEN APPROPRIATE TO ACHIEVING PROGRAM PRIORITIES AND CLIENT OBJECTIVES.**

Relevant Factors include the following:

1. The advocate shows an awareness that advocacy in the legislative process may present the most efficient method to advance client interests.
2. The advocate is fully aware of what is permissible and restricted under LSC rules.
3. The advocate stays aware of legislative activity in area of expertise and is knowledgeable about the legislative process.
4. The advocate fully participates in efforts to plan and carry out legislative advocacy in areas of expertise.
5. The advocate is proficient in both formal and informal methods of representation of client interests through the legislative process, including the need to develop credible relationships with legislators and their staff.
6. The advocate is cooperative with and responsive to requests for information and assistance from the legislature.
7. The advocate is aware of, and is prepared to address the potential impact of the interests of other influential constituencies that may be affected by positions s/he has taken.
8. The advocate attempts to have significant impact on the outcome of the legislative process by effectively analyzing the long-term ramifications of proposed legislation.

### **PERFORMANCE STANDARD 22: Community Legal Education**

**THE ADVOCATE UNDERTAKES COMMUNITY LEGAL EDUCATION THAT IS RESPONSIVE TO PROGRAM PRIORITIES AND CLIENT NEEDS.**

Relevant Factors include the following:

1. The advocate shows a willingness and capacity to integrate community legal education with the overall legal work of BayLegal, in order to benefit a number of clients in a cost-effective manner, including the following, where appropriate:
  - a) Instructing individuals about their legal rights and responsibilities.
  - b) Teaching individuals to represent themselves before appropriate courts and administrative agencies.
  - c) Teach community-based organization staff and volunteers to provide lay assistance for clients in appropriate circumstances.
2. The advocate considers the following factors in choosing a particular community legal education technique:
  - a) The literacy and sophistication of the client population;
  - b) The predominant language(s) used by the clients;
  - c) The geographic dispersion of clients in BayLegal's service area;
  - d) Available resources, including program staff, available private practitioners and public service time or space on television, radio, or other media;
  - e) Means of technologically extending or supplementing program presence in providing education, such as videos, computerized information links and informational packets, audience participation and role-playing, and
  - f) The skills or information being conveyed.

**PERFORMANCE STANDARD 23: Community Group Representation**

THE ADVOCATE IS ALERT TO WAYS THAT ASSISTANCE TO, AND REPRESENTATION OF, COMMUNITY GROUPS MAY HELP CREATE OPPORTUNITIES AND SOLVE CLIENT PROBLEMS. ACCORDINGLY, ADVOCATES MUST DEVELOP SUFFICIENT EXPERTISE TO ADVISE CLIENTS OF THAT OUTCOME AND APPROPRIATELY REFER SUCH MATTERS EITHER WITHIN OR OUTSIDE OF THE PROGRAM, AND, IF APPROPRIATE, TO UNDERTAKE SUCH REPRESENTATION.

Relevant Factors include the following:

1. The advocate's willingness and ability to work with community groups.
2. The advocate's ability to assist groups to develop leadership and the capacity to successfully accomplish their mission.

3. The advocate's ability to conduct leadership training, strategic planning sessions, identify resources, and network the community group with private or public resources.
4. The advocate's ability to collaborate with community organizations, private and public resources to improve the economic well being of a community.
5. The advocate's proficiency in several legal services substantive areas and advocacy techniques.
6. The advocate's ability to leverage resources and bring volunteers funds or other asset to work on behalf of the client.
7. The advocate's ability to work in a team, share information and be part of the continuum of services the client needs.
8. The advocate's skill when working with multiple or difficult clients and other stakeholders.
9. The advocate's creativeness and tolerance for risk.

#### **IV. Professional development**

##### **PERFORMANCE STANDARD 24: Client Advocacy and Professional Development**

**COMMENSURATE WITH THEIR EXPERIENCE, BAYLEGAL ADVOCATES CONTINUE TO DEVELOP PROFICIENCY AND EXPERTISE IN SUBSTANTIVE AREAS OF POVERTY LAW AND TO DEVOTE THEIR TIME AND SKILLS TO LEGAL WORK DESIGNED TO ACHIEVE LONG TERM RESULTS ADDRESSING THE UNDERLYING CAUSES OF CLIENT PROBLEMS.**

The following sections are organized by job classification and include BayLegal's expectations of what staff members in each classification should know and be able to do.